APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

AUDREY LEE,

Plaintiff,

v.

Civil No.
C-1-77-99

SHIELD PETROLEUM CORPORATION,
ET AL.,

Defendants.

NOTICE OF CLASS ACTION

TO:

ALL PERSONS WHO FROM DECEMBER, 1969, THROUGH AUGUST, 1974, PURCHASED INTERESTS IN OIL OR GAS DRILLING VETURES FROM SHIELD PETROLEUM, INCORPORATED, VIKING RESOURCES CORPORATION, OR JAMES C. EIGEL

There is now pending before this Court a class laction for damages for alleged violations of the securities laws of the United States, arising out of the sale by Shield Petroleum, Incorporated, Viking Resources Corporation, or James C. Eigel of interests in oil or gas drilling ventures between December, 1969 and August, 1974.

By Order dated July 12, 1977, this Court has determined that this matter may proceed as a class action.

THE NATURE OF THIS LAWSUIT

The Parties:

The plaintiff, Audrey Lee, is the owner of interests in various oil land gas drilling ventures. She has brought this action on behalf of herself and all other investors.

The corporate defendants are Shield Petroleum Corporation, an Ohio corporation, and Viking Resources Corporation, an Ohio corporation. The individual defendant is James C. Eigel, who the plaintiff alleges is the lowner of defendant Shield Petroleum, Inc. and the majority shareholder, principal officer and director of Viking Resources Corporation.

The Class:

The class has been tentatively defined by the Court as follows: "All persons who from December, 1969 through August, 1974 purchased interests in oil and gas drilling ventures from Shield Petroleum, Incorporated, Viking Resources Corporation, or James C. Eigel."

The Complaint:

In Court I, plaintiff asserts violations of Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934. In Count II, plaintiff asserts misappropriation of assets and breach of fiduciary duty. In Count III, plaintiff seeks an accounting and recovery of damages based upon allegations of Counts I and II.

Defendants' Answers:

By answer filed May 5, 1977, defendants deny all allega-

tions of wrongdoing and have, in addition, advanced certain affirmative defenses.

Further Information Available:

This description of the claims and defenses is general and does not purport to cover all of the claims and contentions of the parties. Further information is contained in the files of this lawsuit which are available for inspection at the offices of the Clerk of the United States District Court for the Southern District of Ohio, United States Courthouse, Cincinnati, Ohio.

Consequences of the Suit:

If the plaintiff succeeds in this lawsuit, members of the class of investors may recover money damages. If the defendants succeed in the lawsuit, all of those claims which are asserted in the lawsuit against them will be dismissed and thereafter forever barred, including those asserted on behalf of the class.

THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL INCLUDE ALL MEMBERS OF THE CLASS WHO DO NOT REQUEST EXCLUSION.

Method of Exclusion:

THE COURT WILL EXCLUDE YOU FROM THE PLAINTIFF CLASS IN THIS LAWSUIT IF YOU SO REQUEST IN WRITING BY SEPTEMBER 15, 1977. If you wish to be excluded, address a letter or postcard to the Clerk of the United States District Court for the Southern District of Ohio, United States Courthouse, Cincinnati, Ohio 45202, stating the following:

1. Name and Address

2. The amount of your investment

3. The date(s) of purchase

4. A statement that you wish exclusion from the class.

Persons who request exclusion will not be entitled to share in the benefits of a judgment if it is favorable to the plaintiff and will not be bound by a judgment if it is adverse to the plaintiff.

Participation:

IF YOU DO NOT REQUEST EXCLUSION, YOU MAY, IF YOU DESIRE, ENTER AND APPEARANCE THROUGH YOUR OWN COUNSEL. SUCH ENTRY OF APPEARANCE BY COUNSEL MUST BE MADE BY SEPTEMBER 25, 1977.

IF YOU DO NOT REQUEST EXCLUSION AND DO NOT ENTER AN APPEARANCE THROUGH COUNSEL OF YOUR OWN CHOOSING, YOU WILL BE REPRESENTED BY PLAINTIFF'S COUNSEL.

THE FOLLOWING ATTORNEYS ARE PRESENTLY ACTING AS COUNSEL FOR PLAINTIFF AND THE CLASS:

Clement Theodore Cooper, Esq.
918 F. Street, N.W. (300-302)
Washington, D.C. 20004

Gene I. Mesh, Esq.
Central Trust Tower
Cincinnati, Ohio 45202

Further Proceedings:

The Order of this Court establishing a class is conditional only and may be altered prior to a decision on the merits. Accordingly, receipt of this Notice by you is not to be construed as a final determination by the Court that you are entitled to participate in the benefits, if any, which ultimately may be realized by the class in this case.

The giving of this notice should not be understood as an expression of any opinion by the Court as to the likelihood of recovery on the part of the plaintiffs or as to the merits of any claims or defenses asserted by either side in this lawsuit.

By Order of The Honorable Carl B. Rubin, Judge, United States District Court for the Southern District of Ohio, Western Division

_____

Clerk of the Court

Date: August 10, 1977

APPENDIX B

UNITED STATES DISTRICT COURT

FILED
SEP 13 1978

FOR THE
SOUTHERN DISTRICT OF OHIO - WESTERN DIV.

CIVIL ACTION FILE NO. C-1-77-99

Audrey Lee, etc..

vs. JUDGMENT

Shield Petroleum, etal

This action came on for trial before the Court, Honorable Carl B. Rubin , United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that plaintiff Audrey Lee's complaint should be and is hereby dismissed at plaintiff's costs.

Dated at Cincinnati, Ohio , this 13th day of September , 1978.

JOHN D. LYTER
Clerk of Court

/s/
Deputy Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

AUDREY LEE,

Plaintiff,

FILED
JOHN D. LYTER, CLERK
Sep 13 11.16 AM '78
U.S. DISTRICT COURT
SOUTHERN DIST., OHIO
WEST DIV. CINCINNATI

v.

Civil No. C-1-77-99

SHIELD PETROLEUM ET AL.,
Defendants.

FINDINGS OF FACT, OPINION AND CONCLUSIONS OF LAW

This matter is before the Court following trial and the presentation of evidence on July 3, 5, 6 and 7, 1978. Plaintiff has asserted class action violations of Sections 17(a) of the Securities act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10-b5 promulgated thereunder. Plaintiff seeks money damages or recission on behalf of herself and a class of investors who had invested with defendants in the drilling and development of oil and gas wells. In accordance with Rule 52 of the Federal Rules of Civil Procedure, the Court does submit herewith its Findings of Fact, opinion and Conclusions of Law.

I

FINDINGS OF FACT

1. For a period beginning in 1965, defendant James C. Eigle was engaged in the business of selling to investors fractional shares in proposed oil and gas wells. From 1965 to approximately 1972 he operated under the corporate name of Shield Petroleum Corporation, an Ohio corporation. Subsequent to 1972 he operated under the name of Viking Resources, a wholly owned subsidiary of Shield Petroleum Corporation. At no time was James C. Eigle, Shield Petroleum, or Viking Resources registered as a broker/dealer with the Securities Exchange Commission.

2. During a period from December, 1969, through December, 1971, plaintiff Audrey Lee invested $5,471.88 with Shield Petroleum Corporation. She never invested with Viking Resources. Her investment purchased a 1/64th interest in each of four wells identified as Laura Kidd No. 3, Laura Kidd No. 4, C. Burke Morris, and Knight No. 1. Plaintiff also purchased a 3/64th interest in a well identified as Knight No. 2.[1]

3. Consolidated Gas Company of West Virginia owns mineral rights in large areas of the State of West Virginia. These rights grant to Consolidated Gas Corporation the right to drill for oil and gas subject to the payment to the owner of the fee simple title of 1/8 of all amounts received from sale of the oil or gas. Consolidated Gas Corporation will grant to third persons what is in effect a sublease upon terms and conditions negotiated between them. Such subleases are known as "farm-out agreements" and will be referred to as such hereafter.

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[1]Plaintiff's complaint refers to "Knight No. 3". The evidence presented indicates that this is a misprint and that the correct reference should be Knight No. 2".

Shield Petroleum Corporation negotiated farm-out agreements with Consolidated Gas Corporation for each of the five wells in question. Shield was required to pay as consideration therefor a 1/8th royalty, known as an "override" to Consolidated Gas and was required to sell to Consolidated at a specified price all gas or oil recovered.

4. It was the procedure of Shield Petroleum Corporation to sell interests in each well in 1/64th denominations. The sales of such interests in each well in 1/64th denominations. The sales of such interests set forth a specific sum for 1/64th for drilling the well and an additional sum for completion costs.

The cost of a well is divided into two segments. First, the cost of drilling a hole to a specific agreed upon depth; and second, to place casing therein, seal the casing with cement, perform an operation known as "hydro-fracing" and attach the well to either a gas or oil pipeline. This division of costs enables the well driller to decide whether or not to complete the well after the agreed depth has been reached. Contracts providing a fixed cost for drilling and for completion are known as "turn key" contracts as distinguished from a contract providing a cost per foot of drilling and completion. All contracts referred to herein were of the turn key variety.

5. Details as to each of the wells in question are as follows:

A. The "C. Burke Morris Well" was actually a three-well program located in Gilmer County, West Virginia. Drilling rights were acquired by Shield from Consolidated Gas Corporation in a farm-out agreement dated June 30, 1969. Interests in the three-well program were sold at $1050.00 for a 1/64th interest in the three wells for drilling and $395.00 for a 1/64th interest in the completion of each individual well. Drilling

for Morris Well No. 1 commenced on July 20, 1970 and reached a depth of 1970 feet. Drilling for Morris Well No. 2 commenced on August 14, 1970 and reached a depth of 2,000 feet. Drilling for Morris Well No. 3 commenced on October 9, 1970 and reached a depth of 2071 feet. All three wells were completed and remained in production until April of 1974 when the wells were sold to the Polumbus Corporation. Shield Petroleum Corporation had retained 18/64th in these wells.*

B. The "Knight No. 1 Well" was located in Calhoun County, West Virginia. Drilling rights were acquired by Shield from W. T. Parks in a farm-out agreement dated June 19, 1970. Interests in this well were sold at $150.00 for a 1/64th interest for drilling to the casing points and $375.00 for a 1/64th interest in the completion of the well. Drilling for Knight No. 1 commenced on July 20, 1970, and reached a depth of 2035 feet. This well was completed and remained in production until April of 1974 when it was sold to the Polumbus Corporation. Shield Petroleum retained 33/64th in this well.*

C. The "Knight No. 2 Well" was also located in Calhoun County, West Virginia. Drilling rights were acquired by Shield from W. T. Parks in the June 19, 1970 farm-out agreement. A 1/64th interest was $375.00. Drilling for Knight No. 2 commenced on August 18, 1970, and reached a depth of 2066 feet. This well remained in production until April of 1974 when it was sold in the transaction with Polumbus Corpora-

*While Shields represented to the investors that it would retain only a 16/64th interest, it did in fact retain those additional interests which it could not sell.

tion. Shield Petroleum Corporation retained a 41/64th interest in this well.*

D. The "Laura Kidd No. 3 Well" was located in Gilmer County, West Virginia. Drilling rights were acquired by Shield from Consolidated Gas Corporation in a farm-out agreement dated May 15, 1969. A 1/64th interest for drilling to the casing point sold for $350.00 and the cost of completion for a 1/64th interest was $375.00. Drilling commenced on January 26, 1970, and reached a depth of 1736 feet. This well was plugged and abandoned on February 27, 1970. Shield Petroleum Corporation retained a 17/64ths interest in this well.*

E. The "Laura Kidd No. 4 Well" is also located in Gilmer County, West Virginia. Drilling rights for this well were also acquired from Consolidated Gas Corporation in a farm-out agreement dated May 15, 1969. A 1/64th interest for drilling to the casing point sold for $350.00 and the cost of drilling to completion was $390.00 for each 1/64th interest. Neither party submitted documents regarding this well. The dates and depth of drilling are not available. This well was included in the transaction with the Polumbus Corporation in April of 1974. shield Petroleum Corporation retained a 38/64ths interest in this well.*

6. No evidence has been presented that any of the defendants failed to drill any of the wells in question in the place agreed upon or to the depth specified. No evidence has been presented that any of the defendants made excessive charges for work performed or failed to perform any services agreed upon.

II

OPINION

There is a threshold question that must be determined before this matter may be decided on its merits. On July 12, 1977 this matter was conditionally certified as a class action in accordance with Rule 23 of the Federal Rules of Civil Procedure. The class at that time was described as:

> All persons who from December, 1969 through August, 1974 purchased and retained as of February 22, 1977 interests in oil or gas drilling ventures from Shield Petroleum, Inc., Viking Resources Corporation of James C. Eigel.

The trial of this case has disclosed first that the plaintiff never invested with Viking Resources Corporation and second, that she failed to act within the appropriate statute of limitations. Authority for the first proposition may be found in Uncontroverted Fact 24 of the Pretrial Order and in the evidence presented. Plaintiff invested in five Shield wells and in nothing else.

The second proposition requires a somewhat more detailed explanation.

Section 15, U.S.C. § 780(a)(1), of the 1934 Act, provides that sales of securities by unregistered brokers or dealers are prohibited. The law appears to be settled that such sales are voidable and subject to recision at a purchaser's option. *Eastside Church of Christ v. Nat'l Plan,* 391 F.2d 357 (5th Cir. 1968). Neither actual damages, nor a causal connection between any damage and the failure to register need be shown. *Eastside, supra.*

It is not so clear, however, which statute of limitations applies to actions under Section 15. Section 29 of the 1934 Act, U.S.C. § 78cc(b), contains a maximum 3-year limitations specifically for violations of U.S.C. § 780(c)(1), but

does not indicate (and case law is unclear) whether such period is applicable to plaintiff's claim herein, Ohio law must provide the limitation.

An assertion of securities fraud in Ohio is subject to a four-year statute of limitations, Ohio Revised Code § 2305.09(c). *Nickels v. Koehler Mgmt, Corp.*, 541 F. 2d 611 (6th Cir. 1976), *cert. den.* 429 U.S. 1074 (1977). Such statute begins to run when the fraud is or should have been discovered. *Gaulin v. K.D.I. Corp.*, 576 F.2d 708 (6th Cir. 1978). Plantiff's assertions regarding absence of proper registration of Shield or Eigle, however, do not amount to a claim of fraud.

That being so, the analogous Ohio statutory provision in this situation is Ohio Rev. Code § 1707.43 which in its current form creates a maximum limitations period of four years (until July 20, 1978, the limitations period was two years), from the date of sale in which a purchaser may void a sale made by an unlicensed broker or dealer. *See* Ohio Rev. Code § 1707.14.

When applied to the facts of this case, any of the above statutes of limitation would bar plaintiff's claim as to the five Shield programs offered. Plaintiff Lee purchased her interests between December, 1969 and December, 1971. This action was commenced February 22, 1977, more than five years after defendant's final sale to plaintiff Lee.

A consideration of the foregoing leads inescapably to the conclusion that prerequisite 3 of Rule 23(a), (Typicality), is not present. Plaintiff is barred by the statute of limitations from asserting claims that may be typical of the claims of the class and proves no claim against the defendant Viking Resources. *It would seem inappropriate to permit claims that are not barred by the statute and claims against Viking Resources to be extinguished by allowing plaintiff to act as a class representative. In view of the*

foregoing, the conditional class certification heretofore entered on July 12, 1977 is now set aside and the disposition of plaintiff's claims whall be deemed dispositive as to her alone.

III

CONCLUSIONS OF LAW

A. This Court has jurisdiction under U.S.C. § 22(a), 27, and 78(aa).

B. Where a plaintiff claims are barred by statutes of limitations such plaintiff is not typical of a class of claimants whose similar claim may not be so time barred and such plaintiff may not act as a representative in a class action.

C. Whether 15 U.S.C. § 78(cc)(b), Ohio Revised Code § 2305.09(c) or Ohio Revised Code § 1707.43 applies, an action asserting violation of securities acts is time bared when brought more than five years after the final purchase of securities evidencing fractal interests in oil and gas wells.

D. In view of Findings of Fact 2 and 6, plaintiff's complaint should be and it is hereby dismissed at plantiff's complaint should be and it is hereby DISMISSED at plaintiff's costs.

LET JUDGMENT ISSUE IN ACCORDANCE WITH THE FOREGOING.

/s/

Carl B. Rubin
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JOHN D. LYTER, CLERK
Sep 13 2.12 AM '78
U.S. DISTRICT COURT
SOUTHERN DIST., OHIO
WEST DIV. CINCINNATI

AUDREY LEE,
Plaintiff,

v.

Civil No. C-1-77-99

SHIELD PETROLEUM
CORPORATION et al
Defendants.

ORDER

This matter is before the Court on plaintiff's motion for reconsideration and to vacate judgment and order (Document 69), on defendants' motion to amend Findings of Fact and Conclusions of Law (Document 70) and upon defendants' motion to amend Findings of Fact, Opinion and Conclusions of Law (Document 71).

Upon consideration of such motions, the Court has reviewed its Findings of Fact, Opinion and Conclusions of Law and concludes that they deal appropriately with the issues raised in this matter.

Finding of Fact 2 is incorrect in regard to the finding that plaintiff Audrey M. Lee invested with defendants during the period of December, 1969 through December, 1971. The date, "December, 1971" in such finding of fact and in the fourth paragraph on p.6 of the opinion is hereby amended to read: "December, 1970."

Insofar as defendants sought the amendment of the finding of fact as set forth in the preceding paragraph herein, such motion is hereby GRANTED. As to all other branches of such motion, it is hereby DENIED.

Plaintiff's motion for reconsideration and to vacate the judgment and order is hereby DENIED.

It is so ORDERED.

/s/

Carl B. Rubin
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

AUDREY LEE,
Plaintiff,

v.

SHIELD PETROLEUM ET AL.,
Defendants.

FILED
JOHN D. LYTER, CLERK
Sep 13 11.14 AM '78
U.S. DISTRICT COURT
SOUTHERN DIST., OHIO
WEST DIV. CINCINNATI

Civil No. C-1-77-99

ORDER

This matter is before the Court for consideration of plaintiff's motion to supplant record by submittal of evidence. Plaintiff seeks to include in the exhibits in this matter files of the Securities Exchange Commission. Defendant has filed a memorandum contra thereto.

In view of the Court's determination that plaintiff's claims are barred by the statute of limitations and that plaintiff is not an appropriate class representative, the question of admissibility of the records in question need not be reached. Plaintiff's motion is hereby DENIED as moot.

It is so ORDERED.

/s/

Carl B. Rubin
United States District Judge

Nos. 79-3416/7

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
MAR 23 1982
John P. Hehman,
Clerk

AUDREY M. LEE,
Plaintiff-Appellant
Cross-Appelleed

v.

SHIELD PETROLEUM CORP., VIKING RESOURCES CORP. and JAMES C. EIGEL,

Defendant-Appellee
Cross-Appellant

ORDER

Before: EDWARDS, Chief Judge; MERRIT and BROWN, Circuit Judges

In this federal securities fraud case, the District Court dismissed the action and decertified the class previously given tentative approval. The basis for the District Court's action was its conclusion after hearing the facts that the named plaintiff's action is barred by the applicable statute of limitations period so as to permit plaintiff's late filing of the case. We agree with the District Court that it is well established that in federal securities fraud actions brought in Ohio the four year statute applies, *Nickels v. Koehler Management Corp.*, 541 F.2d 611 (6th Cir. 1976); *Gaudin v. KDI Corp.*, 541 F.2d 611 (6th Cir. 1978) *aff'ing* 417 F. Sup. 620 (S.D. Ohio 1976), that the plaintiff did not present facts sufficient to extend the running of the statute until the date of the filing of this action and that in light of

these facts the case could not be maintained as a class action by the named plaintiff.

Upon the advice of her lawyer, a previous investor in oil programs of Shield Petroleum, the named plaintiff bought for approximately $5,000 in 1969 and 1970 a 1/64th interest in four oil and gas ventures sold by the defendant, Shield, and a 3/64th interest in one such program. She did not file suit until more than six years after the last purchase. Within two years following the date of her last purchase, she and her adviser were on notice that the royalty returns were minimal and that the oil venture, described by her adviser from the beginning as "risky," was unsuccessful. The facts as developed at trial do not show that the defendants fraudulently concealed geological, economic or other information concerning the venture which would prevent the filing of suit within the statutory period; nor do the facts as developed in the court below show that plaintiff or her adviser pursued with the required diligence an investigation of the reasons for the failure of the venture. In short, we do not find any basis in the record for upsetting as clearly erroneous the findings of the District Court that led to its conclusion that the plaintiff's reliance on the doctrine of equitable tolling is misplaced

Since the named plaintiff's action is barred by the statute of limitations, the District Court did not err in decertifying the class of Shield investors previously given its tentative approval by order. A named plaintiff whose action is barred by the statute of limitations cannot adequately represent such a class. Neither did the court abuse its discretion in refusing to permit immediately prior to trial other investors in different oil drilling programs sold by Viking Resources Corp., programs in which the named plaintiff did not invest, to intervene as named plaintiffs.

The defendants' cross-appeal is also without merit. The District Court did not err in its ruling that, having decertified the class, it could not then bind the class to a ruling that claims by all class members are barred by the statute of limitations. Neither did the District Court err in refusing to rule on the merits of the broker-dealer issue in defendants' favor in light of its dismissal of the action on statute of limitations grounds.

The District Court was correct in ruling that plaintiff's case is barred by the statute of limitations, and its rulings on other subsidiary issues flow logically from this conclusion.

Accordingly, the judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/

Clerk

A TRUE COPY
Attest:
JOHN P. HEHMAN, Clerk

By _____
Deputy Clerk

Issued as Mandate: April 14, 1982
Costs: None

Nos. 79-3416
79-3417

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AUDREY M. LEE,	:	FILED APR 22 1982 John P. Hehman, Clerk
Plaintiff-Appellant Cross-Appelleed	:	
v.	:	ORDER
SHIELD PETROLEUM CORP., VIKING RESOURCES CORP. and JAMES C. EIGEL,	:	
Defendant-Appellee Cross-Appellant	:	

It appearing that the mandate in the above entitled appeals was improvidently issued;

IT IS ORDERED that the mandate be, and it hereby is, recalled.

ENTERED BY ORDER OF THE COURT

/s/

John P. Hehman, Clerk

Nos. 79-3416/7

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 11 1982
John P. Hehman,
Clerk

AUDREY M. LEE,
Plaintiff-Appellant
Cross-Appellee

v.

SHIELD PETROLEUM CORP., VIKING RESOURCES CORP. and JAMES C. EIGEL,

Defendant-Appellee
Cross-Appellant

ORDER DENYING PETITION FOR REHEARING

Before: EDWARDS, Chief Judge; MERRITT and BROWN, Circuit Judges

No judge of the court having moved for rehearing en banc, the petition for rehearing has been referred to the hearing panel for disposition.

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/
Clerk